

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 1:17-cr-00204-TWP-MJD
)
JOSUE AMILCAR DUARTE,) -01
)
Defendant.)

REPORT AND RECOMMENDATION

The Parties appeared on April 25, 2023, before United States Magistrate Judge Kellie M. Barr for a hearing on the Petition for Warrant or Summons for Offender under Supervised Release filed on March 13, 2023. Defendant appeared in person and by counsel Gwendolyn Beitz of the Federal Community Defenders. Government represented by Assistant United States Attorney Michelle Brady. United States Probation Office represented by Angela Smith.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Mr. Duarte of his rights and provided him with a copy of the petition. Mr. Duarte orally waived his right to a preliminary hearing.
2. After being placed under oath, Mr. Duarte admitted violation numbers 1, 2, and 3. [Dkt. 70.] The Court **GRANTED** the Government's oral motion to withdraw violation 4.
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

Violation Number	Nature of Noncompliance
1.	"You must not unlawfully possess a controlled substance. You must refrain from any unlawful use of a controlled substance." Mr. Duarte submitted a urinalysis on January 26, 2023, that yielded positive for methamphetamine. He admitted having used

	methamphetamine on January 24, 2023. Additionally, he failed to report to drug screening on the following dates: October 31, 2022; January 23, 2023; February 13, and 21, 2023.
2.	<p>"You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program."</p> <p>Mr. Duarte failed to attend substance abuse treatment on February 21, 28, 2023; and March 7, 2023.</p>
3.	<p>"You shall report to the probation officer in a manner and frequency directed by the court or probation officer."</p> <p>The probation officer attempted to make telephone contact with Mr. Duarte on the following dates: February 14, 15, 16, and 28, 2023, and on each occasion instructed him to return the officer's call. The officer attempted to make contact with Mr. Duarte at his home on February 17, 2023, but was unable to locate him. A letter was mailed to his home instructing him to report to the office on March 7, 2023; however, he failed to report on that date.</p>

4. The Parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is V.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 18 to 24 months' imprisonment.

5. The Parties jointly recommended a sentence of 7 months' imprisonment with 2 years of supervised release to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions to which he admitted in the petition (1, 2, and 3), that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of 7 months of incarceration with 24 months of supervised release to follow.


Mr. Duarte is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The Parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge.

The Parties orally waived the fourteen-day period to object to the Report and Recommendation.

IT IS SO RECOMMENDED.

Date: 4/26/2023


Kellie M. Barr
United States Magistrate Judge
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email